

**AGREEMENT**

This Agreement, made and entered into and effective as of April 21, 2014, by and among (i) **LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT**, an urban county government of the Commonwealth of Kentucky pursuant to KRS Chapter 67A ("LFUCG"); (ii) **ARTEK, LLC**, a Kentucky limited liability company ("Artek"); (iii) **HOLLY B. WIEDEMANN**, an individual ("Individual Guarantor"); (iv) **AU ASSOCIATES, INC.**, a Kentucky corporation ("Corporate Guarantor" and collectively with Individual Guarantor, the "Guarantors"); and (v) **LEXINGTON DOWNTOWN HOUSING FUND, LLC**, a Kentucky limited liability company ("LDHF").

**RECITALS**

**WHEREAS**, Artek was previously provided a loan in the principal amount of \$600,000.00 from LDHF ("Project Loan"), for the construction of thirty-eight residential condominium units in Lexington, Kentucky, commonly known as Artek Lofts (the "Project"), as evidenced by, among other things, a Loan Agreement dated May 4, 2006, as amended; and

**WHEREAS**, the Guarantors unconditionally and jointly and severally guaranteed the Project Loan, and the Project Loan is further secured by, among other things, a mortgage lien in and against the Project property pursuant to a Mortgage, Security Agreement and Fixture Financing Statement dated May 4, 2006, of record in Mortgage Book 5707, Page 695 in the Fayette County Clerk's Office, as amended and/or extended from time to time ("LDHF Mortgage"); and

**WHEREAS**, LFUCG leased from Kentucky League of Cities Funding Trust the principal amount of the Project Loan pursuant to a Lease Agreement dated May 1, 2006, as amended ("Lease"), and subleased such amount to LDHF for its use in fully funding the Project Loan pursuant to a Sublease Agreement with LDHF ("Sublease"), and LFUCG is obligated to fully repay such amount to Kentucky League of Cities Funding Trust; and

**WHEREAS**, the primary lender on the Project has reached a workout with Artek under which it is taking a substantial reduction on the amount it is owed on the Project and is requiring that all other liens on the Project be released, including the LDHF Mortgage; and

**WHEREAS**, as part of the above workout Artek will obtain a new first priority loan with Kentucky Bank (the "Bank Loan"); and

**WHEREAS**, LFUCG wants to avoid a foreclosure on the property involved in the Project while retaining some payment for the sums used to fund the Project Loan and has been authorized to enter into a workout of that loan amount; and

**WHEREAS**, LDHF desires to facilitate such workout by entering into this Agreement.

**NOW, THEREFORE**, in consideration of the foregoing and mutually agreed upon promises, conditions, and covenants hereinafter set forth, and which the receipt and sufficiency is hereby acknowledged, the parties hereto agree as follows:

1. The above recitals are hereby incorporated herein as terms of this Agreement as if fully stated.
2. LFUCG agrees that, before or concurrently with the closing of the Bank Loan, LFUCG shall request that LDHF release and cancel any and all documents or instruments evidencing or securing the Project Loan, including, without limitation, any loan agreement, promissory note, security agreement, fixture financing statement, assignment of rents and leases, the LDHF Mortgage and the guaranty agreements executed by the Guarantors (collectively, "LDHF Loan Documents").
3. LDHF agrees that, before or concurrently with the closing of the Bank Loan, as requested by LFUCG, but subject to obtaining all necessary limited liability company consents and approvals, LDHF shall release and cancel the LDHF Loan Documents and deliver to LFUCG a full release of the LDHF Mortgage (and any other LDHF Loan Document of

record in the Fayette County Clerk's Office) in recordable form. In consideration of LDHF's agreement to release the LDHF Mortgage and other Loan Documents as set forth above, Artek agrees that it shall be solely responsible for all recording costs associated with recording such release(s) and that, no later than two (2) business days following the Bank Closing, Artek shall reimburse to LDHF its attorneys' fees and costs incurred in connection with this Agreement and in preparing such release(s), provided that LDHF agrees that such fees and costs shall not exceed \$1000.00. Further, LFUCG acknowledges and agrees that LDHF has no obligation or liability to LFUCG related to the Project Loan, whether under the Sublease or otherwise, and fully and forever releases and holds harmless LDHF from any such obligation or liability.

4. The parties agree that in return for LFUCG and LDHF not pursuing repayment of the funds related to the Project Loan, Artek will provide payment to LFUCG as further provided herein, with Guarantors guaranteeing such payment.
5. The parties agree that, before or concurrently with the closing of the Bank Loan, Artek shall provide a subordinated promissory note and guaranty made payable to LFUCG in the original principal amount of one hundred fifty thousand dollars (\$150,000.00) (the "Subordinated Note"). The Subordinated Note (i) shall have a maturity date occurring on the fifth (5<sup>th</sup>) anniversary of the making of this Agreement (the "Maturity Date"), (ii) shall not accrue interest, and (iii) shall be payable in full in one lump sum payment upon the Maturity Date. In the event that the Bank Loan is refinanced prior to the Maturity Date, the Subordinated Note shall become immediately due and payable.
6. That concurrently therewith Artek will use its best efforts to pay any additional funds that may be available at the Maturity Date and/or at the time of refinancing of the Bank Loan, up to a maximum additional amount of seventy five thousand dollars (\$75,000.00) (the "Available Cash Payment").
7. LFUCG agrees that the repayment of the \$150,000.00, any Available Cash Payment amount and the Closing Payment described in paragraph 8 below shall be deemed to satisfy Artek's obligation in full.
8. In further consideration of LFUCG's agreement to enter into this Agreement, concurrently with the closing of the Bank Loan and the Subordinated Note and to the extent Artek has excess funds available following the funding of the Bank Loan, Artek agrees to pay to LFUCG an amount not to exceed twenty thousand dollars (\$20,000.00) (the "Closing Payment").
9. This Agreement may be executed in one or more counterparts, including electronically transmitted counterparts, each of which shall be deemed an original, but all such counterparts together shall constitute but one and the same Agreement.

IN TESTIMONY WHEREOF, the parties have hereto caused this contract to be executed upon signature by proper officers and representatives.

ATTEST:

  
Council Clerk

LEXINGTON-FAYETTE URBAN COUNTY  
GOVERNMENT

BY:

  
JIM GRAY, MAYOR

Witness: Tom Green

ARTEK, LLC

BY:

Holly B. Wiedemann  
HOLLY B. WIEDEMANN, MANAGER

Witness: Tom Green

Holly B. Wiedemann  
HOLLY B. WIEDEMANN, INDIVIDUAL GUARANTOR

Witness: Tom Green

AU ASSOCIATES, INC.

BY:

Holly B. Wiedemann  
HOLLY B. WIEDEMANN, PRESIDENT  
CORPORATE GUARANTOR

LEXINGTON DOWNTOWN HOUSING FUND, LLC

BY:

William C. Allen  
WILLIAM C. ALLEN, CHAIRMAN

Witness: \_\_\_\_\_

ARTEK, LLC,

BY: \_\_\_\_\_

HOLLY B. WIEDEMANN, MANAGER

Witness: \_\_\_\_\_

\_\_\_\_\_  
HOLLY B. WIEDEMANN, INDIVIDUAL GUARANTOR

Witness: \_\_\_\_\_

AU ASSOCIATES, INC.

BY: \_\_\_\_\_

HOLLY B. WIEDEMANN, PRESIDENT  
CORPORATE GUARANTOR

LEXINGTON DOWNTOWN HOUSING FUND, LLC

BY: \_\_\_\_\_

  
WILLIAM C. ALLEN, CHAIRMAN

## SUBORDINATED PROMISSORY NOTE

\$150,000.00

Lexington, Kentucky

April \_\_, 2014

FOR VALUE RECEIVED, the undersigned, **ARTEK, LLC**, a Kentucky limited liability company with principal office and place of business in Lexington, Kentucky (the "Maker"), hereby promises and agrees to pay to the order of **LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT**, an urban county government of the Commonwealth of Kentucky pursuant to KRS Chapter 67A (the "Lender"), the principal sum of ONE HUNDRED FIFTY THOUSAND DOLLARS (\$150,000.00) (the "Indebtedness"). The terms and provisions of this Subordinated Promissory Note (this "Note") are as follows:

1. This Note has been issued pursuant to that certain Agreement of even date herewith by and among Lender, Maker and certain "Guarantors" defined therein. Further, this Note is the "Subordinated Promissory Note" referred to in the Agreement and is entitled to all of the benefits thereof.

2. Calculation of Interest. The outstanding principal amount of this Note shall not bear interest.

3. Payment of Principal. The outstanding principal of this Note shall be paid in full in one lump sum payment to the Lender on April \_\_, 2019 (the "Maturity Date"), which is the final maturity date of this Note.

4. Place of Payment. All payments of principal on this Note shall be made to the Lender in legal tender of the United States of America at its offices located at 200 East Main Street, Lexington, Kentucky 40508, or to such other person or such other place or form of transfer as may be designated in writing by the Lender.

5. Events of Default. Each of the following events shall constitute an "Event of Default" under this Note.

(a) Default in Payment. If the Maker shall fail to pay the principal of this Note when required in Section 3 above.

(b) Insolvency. If the Maker shall (i) discontinue business, (ii) make a general assignment for the benefit of its creditors, (iii) apply for or consent to the appointment of a custodian, receiver, trustee or liquidator of all or a substantial part of its assets, (iv) be adjudicated a bankrupt or insolvent, (v) file a voluntary petition in bankruptcy or file a petition or an answer seeking a composition, reorganization or an arrangement with creditors or seeking to take advantage of any other law (whether federal or state) relating to relief for debtors, or admit (by answer, default or otherwise) the material allegations of any petition filed against it or him in any bankruptcy, reorganization, composition, insolvency or other proceeding (whether federal or state) relating to relief for debtors, (vi) suffer or permit to continue unstayed and in effect any judgment, decree or

order entered by a court or governmental agency of competent jurisdiction, which assumes control of the Maker or approves a petition seeking reorganization, composition or arrangement of the Maker or any other judicial modification of the rights of any of its creditors, or appoints a custodian, receiver, trustee or liquidator for the Maker, or for all or a substantial part of any of its business or assets, (vii) not be paying its debts generally as they become due, or (viii) be enjoined or restrained from conducting all or a material part of any of its businesses as now conducted and the same is not dismissed and dissolved.

6. Late Payments. In the event that any payment on this Note is overdue for more than thirty (30) days past the due date thereof under the terms of this Note, the Lender may, at any time thereafter, assess a penalty in the amount of five percent (5%) of the late payment as a late charge. This shall not constitute a waiver of any default or event of default.

7. Acceleration. The entire unpaid principal balance of this Note shall be immediately due and payable, at the option of the Lender, upon (i) a continuing Event of Default, or (ii) a refinancing of the Senior Indebtedness (as hereinafter defined) prior to the Maturity Date.

8. Full Recourse. This Note is a full recourse, unconditional and joint and several obligation of Maker and the undersigned Guarantors.

9. No Implied Waivers. The failure of the Lender to exercise any of its rights, powers and/or remedies shall not constitute a waiver of the right to exercise the same at that or any other time. All rights and remedies of the Lender for default hereunder shall be cumulative to the greatest extent permitted by law.

10. Attorneys' Fees. If there is any Event of Default under this Note and this Note is placed in the hands of any attorney for collection, or is collected through any court, including any bankruptcy court, the Maker promises and agrees to pay to the Lender its reasonable attorneys' fees, court costs and other expenses incurred in collecting or attempting to collect this Note.

11. Prepayment. This Note may be prepaid at any time, in whole or in part, and without premium or penalty, and all such voluntary prepayments shall be applied to the principal of this Note.

12. Subordination. This Note, and the Indebtedness evidenced hereby, and the obligations of any guarantor of the obligations of Maker under this Note are hereby expressly subordinated and subject in right of payment to the prior payment in full of that certain Promissory Note in the original principal amount of Two Million Seven Hundred Seventy-Five Thousand Dollars (\$2,775,000.00), made by and among the Maker, AU Associates, Inc. and Holly B. Wiedemann, as co-borrowers, to and in favor of Kentucky Bank, a Kentucky banking corporation (the "Senior Indebtedness"). The Lender agrees that it will not commence any action or proceeding of any kind against the Maker or any guarantor of this Note to recover all or any part of the Indebtedness not paid when due and shall not join with any creditor in any proceeding against the Maker under any liquidation, conservatorship, bankruptcy, or other insolvency law now or hereafter existing, unless and until the indefeasible payment in full of the Senior Indebtedness.

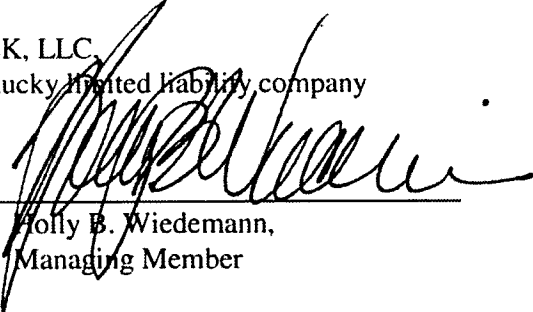
13. Governing Law. This Note has been delivered in, and shall be governed by and construed in accordance with the laws of, the Commonwealth of Kentucky.

14. Waivers. The Maker hereby waives presentment, demand, notice of dishonor, protest, notice of protest and nonpayment, and further waives all exemptions to which it may now or hereafter be entitled to under the laws of this or any other state or of the United States. The Lender shall have the right to grant the Maker any extension of time for payment of this Note or any other indulgence or forbearance whatsoever, and may release any security for the payment of this Note, in every instance without the consent of the Maker and without in any way affecting the liability of the Maker hereunder, and without waiving any rights the Lender may have hereunder or by virtue of the laws of this or any other state or of the United States.

15. Captions. The section headings of this Note are inserted herein solely for convenience of reference and shall not affect the construction or interpretation of the provisions hereof.

IN WITNESS WHEREOF, the Maker has executed this Note as of the \_\_\_\_ day of April, 2014.

ARTEK, LLC  
a Kentucky limited liability company

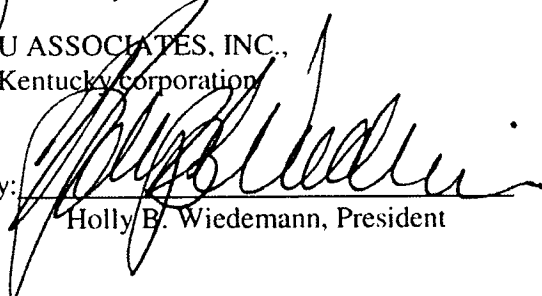
By:   
Holly B. Wiedemann,  
Managing Member

GUARANTY

The undersigned, Holly B. Wiedemann, an individual, and AU Associates, Inc., a Kentucky corporation (collectively, the "Guarantors"), hereby jointly and severally, absolutely and unconditionally guarantee to the Lender the due and punctual payment of all sums due or to become due under this Note, whether the same become due by virtue of an acceleration following an Event of Default or otherwise. This is a guaranty of payment and not of collection, and Guarantors hereby knowingly and voluntarily waive all guaranty and suretyship defenses generally.

  
HOLLY B. WIEDEMANN, Individually

AU ASSOCIATES, INC.,  
a Kentucky corporation

By:   
Holly B. Wiedemann, President